In the Matter of SWIFT & COMPANY *and* UNITED PACKING HOUSE WORKERS LOCAL INDUSTRIAL UNION #814

Case No. C-923.—Decided October 9, 1939

Meat Packing Industry—Interference, Restraint, and Coercion—Company-Dominated Union: domination of and interference with formation and administration; support; respondent's expression of preference for an unaffiliated labor organization after voluntary dissolution of company-dominated plan; circulation of petitions for, during working hours, with encouragement of foremen and other supervisory employees; coercive statements of supervisory employees against membership in rival labor organization; dissolved by action of members, and recognition as collective bargaining agent withdrawn by respondent subsequent to issuance of complaint but prior to hearing; respondent ordered to refuse recognition if it should return to active existence—*Discrimination:* discharge: charges of, not sustained; dismissed.

Mr. Lee Loevinger, for the Board.

Mr. William N. Strack, of Chicago, Ill., and *Mr. D. L. Grannis*, of South St. Paul, Minn., for the respondent.

Mr. Ralph L. Helstein, of St. Paul, Minn., for the United.

Mr. N. Barr Miller, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by United Packing House Workers Local Industrial Union #814,[1] herein called the United, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued a complaint, dated July 5, 1938, against Swift and Company, South St. Paul, Minnesota, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

[1] In the charge, complaint, and other pleadings and papers, the charging union was designated United Packing House Workers Local Industrial Union 756. By motions allowed at the hearing, the charge, complaint, and other pleadings and papers were amended to designate the number of the union as 814.

The complaint alleged in substance that the respondent, through its officers and agents, has dominated and interfered with the formation and administration of the Employees Security Association and its successor, the Packing House Employees' Union of South St. Paul, Local No. 1,[2] herein called the Association, and has contributed financial and other support thereto, and has urged, persuaded, and warned its employees against becoming members of the United, and has carried on a general course of coercion and intimidation against its employees who were members of the United.

A copy of the complaint, accompanied by notice of hearing, was duly served upon the respondent and upon the United on July 6, 1938. The respondent filed a motion to dismiss the complaint, dated July 7, 1938, which motion was denied by the Regional Director. Thereafter, the respondent filed its answer, dated July 13, 1938, in which it denied all the material allegations of the complaint. On July 18, 1938, the respondent filed motions asking that the charge and the complaint, respectively, be made more specific, definite, and certain and that the facts be stated to sustain the conclusions pleaded therein, on the ground that they failed to state the names of the persons involved and the time and place of occurrence of the acts alleged to have been committed by respondent's officers and agents, thereby leaving the respondent without opportunity to prepare its defense for the hearing. On July 28, 1938, the attorney for the Board filed an answer to the motion regarding the complaint, in which answer the names of the respondent's officers and agents who were alleged to have committed the unfair labor practices and the time and place of occurrence were set forth; at the same time the answer denied that the original complaint was defective in the respects alleged by the respondent. This answer was served on the respondent the same day and the hearing postponed. Under these circumstances we find that the respondent was not prejudiced by any lack of specification in the original charge or complaint.

On August 3, 1938, the respondent filed an amendment to its original answer, stating that it had been notified by the Association, that said Association had been dissolved on July 29, 1938, and further stating that the respondent notified its employees on August 3, 1938, that the Association was completely disestablished as their representative for the purposes of collective bargaining.

In the meantime, an amended charge was filed by the United, dated July 29, 1938, alleging that the respondent had committed an unfair labor practice, within the meaning of Section 8 (3) of the Act, by discharging Wallace Donovan on or about November 21, 1937, for the reason that he was a member of and active in the United. The

[2] Incorrectly designated in the complaint as Employees Packinghouse Union.

Board, through its Regional Attorney, thereupon filed a motion to amend the complaint to include the new charge. This motion was served upon the parties by registered mail, receipts for which show delivery on August 4, 1938.

Pursuant to notice, a hearing was held in St. Paul, Minnesota, on August 8, 9, 10, and 11, 1938, before W. P. Webb, the Trial Examiner duly designated by the Board. The Board, the respondent, and the United were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

At the commencement of the hearing the respondent filed its written motion to strike the motion to amend the complaint, on the ground that it was filed and served on the respondent less than 5 days prior to the opening of the hearing and violates Article II, Section 5, of National Labor Relations Board Rules and Regulations—Series 1, as amended. The Trial Examiner ruled that the motion to amend the complaint should be granted, but that no evidence on the alleged unfair labor practice stated in the motion should be heard before August 10, 1938. In view of the fact that we have found that the allegation contained in the amendment is not supported by the evidence,[3] it is unnecessary to determine the correctness of the ruling of the Trial Examiner in this matter.

During the course of the hearing, the Trial Examiner made various rulings on other motions and objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Thereafter, the Trial Examiner filed his Intermediate Report, a copy of which was served upon counsel for the respondent on September 26, 1938, finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7), of the Act, and recommending that the respondent cease and desist from such unfair labor practices, withdraw all recognition from the Association as the representative of its employees for the purposes of collective bargaining, and take certain other action to remedy the situation brought about by the unfair labor practices, and further finding that there had been no discrimination in regard to the hire or tenure of employment of Wallace Donovan within the meaning of Section 8 (3) of the Act. Upon request of the respondent, its time for filing exceptions to the Intermediate Report was extended to November 21, 1938, on which date exceptions were filed. On August 29, 1939, oral argument on the exceptions and record was had before the Board in Washington, D. C., by the respondent.

[3] See Section III C, *infra*.

The Board has reviewed the exceptions to the Intermediate Report and, save as consistent with the findings, conclusions, and order, hereinafter set forth, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

Swift and Company is an Illinois corporation with its principal executive offices at Chicago, Illinois. It operates approximately 35 plants in various parts of the country for the slaughter of livestock and the processing of meat products and in 1937 was licensed to do business in 45 States, including Minnesota. It ranks as one of the four largest meat-packing companies in the United States.

At its South St. Paul, Minnesota, plant, which is the only plant involved in the present proceedings, the respondent is engaged in the purchase and slaughter of cattle, sheep, and hogs, the processing of meat and cheese, and also handles butter and eggs. Livestock is shipped to the South St. Paul stockyards from Wisconsin, North and South Dakota, Montana, and Minnesota. Most purchases are made by the respondent from commission men at the yards. During the fiscal year ending October 30, 1937, the respondent purchased $38,906,214.42 worth of such livestock, or approximately 96 per cent of its total purchases, at the South St. Paul yards. Four per cent of its livestock purchases were made outside the State of Minnesota. Other supplies, such as boxes, barrels, sugar, salt, and spices, amounting to $1,450,084, were purchased during the same fiscal year; $565,762 worth of such supplies were bought in Minnesota, and $884,322 worth outside the State. Sales of products produced at the South St. Paul plant in that year amounted to $51,570,360. Approximately 11 per cent of these sales were distributed within Minnesota; the balance elsewhere, chiefly in Wisconsin, Illinois, Iowa, Montana, North and South Dakota.

The respondent normally employs approximately 2,800 persons at its South St. Paul plant, of whom about 300 are in the office and sales forces.

II. THE LABOR ORGANIZATIONS INVOLVED

United Packing House Workers Local Industrial Union #814 is a labor organization affiliated with the Congress of Industrial Organizations.

Employees Security Association and its successor, Packing House Employees' Union of South St. Paul, Local No. 1, are unaffiliated labor organizations admitting to membership employees of the respondent at its South St. Paul plant.

III. THE UNFAIR LABOR PRACTICES

A. *The employee-representation plan*

For at least 15 years prior to April 1937 there had been in operation at the South St. Paul plant of the respondent an employee-representation plan known as the Assembly Plan. The Assembly was composed of 15 persons appointed by the management to represent the interests of the respondent and 15 representatives elected by the hourly paid employees. These 30 representatives chose one of their number as chairman, usually one of the persons appointed to the Assembly by the respondent. The Assembly handled grievances of the hourly paid employees. The management of the respondent participated actively in the operation of this Plan. Members of the Assembly were customarily notified by the respondent's employment manager that meetings were to take place. Meetings were held in the assembly room of the respondent's general office and, on occasion, during working hours. On April 21, 1937, the respondent dissolved the Assembly Plan.

The complaint does not allege that the respondent engaged in an unfair labor practice within the meaning of the Act by dominating or interfering with the Assembly, and we make no finding to that effect. However, the sponsorship of and participation in the Assembly Plan by the respondent for some years prior to April 1937 reveal the respondent's course of conduct up to the time of the events alleged by the complaint to be unfair labor practices, and supply a background against which these subsequent events can be more accurately evaluated.[4]

B. *Interference with, and domination and support of, Employees Security Association*

At a meeting of the Assembly on April 21, 1937, the representatives were informed of the dissolution of the Plan by the respondent. A statement was read to the assembled representatives which had been sent from the Chicago office of the respondent for that purpose. The statement, which was also posted by the respondent on the bulletin boards of the South St. Paul plant, follows herewith:

> On Monday, April 12, the United States Supreme Court made public its decisions on several cases under the National Labor Relations Act (The Wagner Bill) and held the Act valid.
>
> It is Swift & Company's intention to comply with the law as the Court has now construed it and it is not possible to continue the present Representation Plan.

[4] See *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company*, 303 U. S. 261.

Whether you wish to establish an employes' representation plan for collective bargaining, that will comply with the terms of the law, is a matter for you to decide. If you wish to adopt a plan for negotiating with the company on wages, hours, and working conditions, it should not include management participation in elections of employe representatives, the furnishing of printed material by the company, nor company compensation to employe representatives for time spent away from their work, except when conferring with management, as this latter is not prohibited by law.

It shall be the policy of the company to continue to consult with its employes on all matters of mutual interest in an honest effort to find the proper solution to problems. Finally, the company earnestly desires that the understanding growing out of our relationships during these past many years will be the basis upon which the continued good relations between employes and the company will be maintained.

After the reading of the statement, C. A. Cushman, the general manager of the South St. Paul plant, made a talk in which he lauded the Assembly Plan and went on to tell the Assembly that the employees now had the choice of organizing an independent union of their own or affiliating with a national organization, and that they were privileged to do as they liked. He added that personally he preferred to talk directly to the employees. George Evasku, one of the witnesses, stated at the hearing that Cushman also said in this connection that he would rather deal with the employees because "you get an outsider down here and you know what happens . . . there is usually a fight." Cushman's own version of his talk does not include the quoted remarks, but he did not specifically deny them and admitted that he spoke extemporaneously to the Assembly. We find that Cushman made the remarks attributed to him by the witness Evasku. Superintendent McDonald of the plant also spoke, telling the representatives that he felt it would be much better to deal with "their own employees." Thereupon, the 15 representatives of the management and Cushman and McDonald withdrew from the meeting, leaving the 15 employee representatives to decide what action to take. They elected temporary officers, decided to form an unaffiliated union, and went from the respondent's assembly room to their own meeting room "across the tracks," which is apparently off the respondent's premises. They sent for Superintendent McDonald with whom they discussed the question of what lawyer to employ to assist them in forming an organization. The respondent's lawyer was mentioned and rejected, whereupon McDonald said: "Well, you fellows haven't got any particular person in mind. I have the name

of this fellow Green . . . he was the attorney for the Cudahy boys and he is supposed to be pretty well versed on this labor question, so I guess he can take care of you boys." McDonald had Green's name already written down and drew it from his pocket and threw it on the desk as he spoke.[5] A committee was named to go to see Green at once. They met him that afternoon at a room in the Lowry Hotel in St. Paul where he was in conference with some of the Cudahy employees. He drew up a petition designating 15 employees, 14 of whom had been representatives under the Assembly Plan, as temporary representatives for the purposes of collective bargaining and urged haste in securing the signatures. The 15 representatives went off the respondent's pay roll at noon of the day the Assembly Plan was dissolved, which was Wednesday, April 21, and remained off the pay roll the rest of that week. Their time was devoted to soliciting signatures to the petition which designated a temporary bargaining committee and also stated the desire of the employees to join the proposed independent union.

While the committee was circulating petitions, it also issued handbills announcing a mass meeting to be held on April 27, 1937, at the Horse Barn,[6] for the purpose of organizing the unaffiliated Association. At this mass meeting Attorney Green read a letter from C. A. Cushman, general manager of the South St. Paul plant, in reply to one from the committee of 15. The committee's letter bore the date April 26, 1937, and requested recognition as bargaining agent for the employees and offered to submit signatures to show that 51 per cent had agreed to join the proposed Association. The testimony at the hearing shows that Attorney Green and several of the committee called on Cushman for a written statement either shortly before the commencement of the mass meeting or during the first half hour of the meeting. Cushman gave them a reply to their letter of the 26th in which he stated that an examination of the petition [7] showed that more than 51 per cent of the eligible employees had signified their intention of joining the Association. He further stated that the respondent would negotiate with representatives of the Association. The bylaws of the Association, which had been drafted by Green on

[5] This incident occurred on April 21, 1937. See *Matter of The Cudahy Packing Company* and *Packinghouse Workers Local Industrial Union No. 62, affiliated with the Committee for Industrial Organization*, 5 N. L. R. B., 472, modified and affirmed in *Cudahy Packing Co.* v. *National Labor Relations Board*, 102 F. (2d) 745 (C. C. A. 8th, 1939), in which the "independent" union which Attorney Green assisted in organizing for Cudahy employees at St. Paul after consultation on April 17, 1937, was disestablished as company dominated, in part because Green was also an attorney for the Cudahy Company.

[6] A building in the stockyard area but not on the respondent's property.

[7] The record does not disclose in what manner the petition was submitted to the respondent or how long it was in the respondent's possession, but Cushman testified that he instructed Superintendent McDonald to have his timekeeper check the signatures and was advised they had been checked.

the instructions of the committee of 15, were then read, and Green urged the employees to support the proposed Association.[8] Only one employee at this meeting opposed organization of the unaffiliated Association and urged outside affiliation. At a meeting in Croatian Hall about a week later officers of the Association were elected. Of 15 trustees elected, 13 had been representatives under the Assembly Plan. Walter Starzmann was elected president but resigned within a few months, following accusations that he was too friendly with the management. Starzmann was succeeded by John Larkin. In December 1937 Sam Reyer had a conversation with Larkin during which Larkin inquired where support for the local C. I. O. activities came from. After giving him the information Reyer said to Larkin: "Now, will you tell me in your own words a statement of where you are getting your support from?" Larkin replied: "Swift and Company and none other." This statement was undenied at the hearing, and we find that it was made by Larkin with reference to the Association. In the spring of 1938 the Association changed its name to Packing House Employees Union of South St. Paul, Local No. 1. On July 29, 1938, after the complaint was issued in this proceeding, the trustees of the Association took action to dissolve and notified the respondent that it no longer claimed to be the representative of the employees of the South St. Paul plant. On August 3, 1938, the respondent posted notices stating that it had been notified of the dissolution of the Association and accordingly had withdrawn all recognition from said Association and further stating that the Association was completely disestablished as such representative.

During the period when the Association was being organized the solicitation of signatures took place on the premises of the respondent, both in the dressing rooms and on the floors of the plant, during working hours. George Evasku, one of the 15 employee representatives under the Assembly Plan, testified that he solicited memberships in the dressing room of the plant during working hours for several days after April 21, 1937. Blanche Dols, an employee of the respondent, stated that on or about April 23, 1937, memberships in the Association were solicited by Archie Saunders during working hours in the sausage-chopping department in the presence of Joe Kalish, a supervisory employee. The witness testified that Kalish inquired of Saunders "whether he had been down to sign the night gang yet." This testimony stands undenied. We find that these incidents occurred as described by the witness. An employee of the icing department was asked sometime between April 21 and

[8] Green told the employees that he thought it better for them "to play ball with the company and organize an independent union rather than to affiliate . . . with any outside union . . . Swift has always treated you boys pretty nice, and if you have no objection at this time to the way you are treated . . . give them the benefit of the doubt."

25, 1937, to sign the petition for membership in the Association. The solicitor, Art Ziehl, took this witness, Eugene Corcoran, into the foreman's office and talked to him there about signing the petition. Present in the foreman's office at the time was Elmer Johnson, an assistant foreman. Corcoran also testified that sometime later, A. R. Sedarstrom, the foreman of his department, brought to his office a weekly paid employee [9] named Beedle, who talked to the icing-department employees in favor of the Association during the lunch hour. Although Sedarstrom denies that he brought Beedle in, he admits that he was present when the speech was made in his office, where the employees were accustomed to gather at the noon hour. From an examination of all the testimony we do not believe that Sedarstrom brought Beedle in, but we find that he allowed his office to be used for the speech urging membership in the Association and remained to listen to it. Peter Dame, an employee in the beef-kill department, testified that just after the Assembly Plan was disestablished, Art Stice, a strawboss and relief man, called him off the floor to meet an employee, Roy Olson, who was signing up members for the Association. The witness says he was off the floor for about 15 minutes without loss of pay. Dame states that nearly every employee on the floor was called out in the same manner and his work taken over by Art Stice while he was gone. We find that Dame and other employees were called off the floor of the beef-kill department during working hours for the purpose of being solicited for membership in the Association. Several other witnesses told of solicitation in the plant during working hours by the representatives interested in organizing the Association.

Not only did the foremen and supervisory employees tolerate the solicitation of memberships for the Association in their departments during working hours, but in various ways they took a more active part. About the time the Assembly Plan was dissolved and the campaign for organizing an unaffiliated Association was launched, the United, a C. I. O. affiliate, began a drive for members among the employees of the respondent's South St. Paul plant. During June 1937, John Ketter, an inspector, acted as assistant foreman in the beef-casing department while the regular assistant foreman was on vacation. Ketter questioned the employees under him about what they would gain by belonging to the C. I. O., and encouraged them to join the Association. In July 1937 he is quoted as saying to employees in the beef-casing department, and we find that he said, that the respondent would hire women in their places "if they didn't come down to earth and not be so radical." Objections to the United increased during the summer of 1937. On September 27,

[9] In the Assembly Plan, representatives of the management had been chosen from the weekly paid employees.

1937, occurred one of the major incidents involving such objections. It is described in a memorandum by Casper Merle and William P. Sebert, employees of the respondent, made the day of the occurrence and placed in the record at the hearing, and also testified to by Merle at the hearing. On the day in question Casper Merle and William P. Sebert were working in the beef-offal department. About 2 p. m. Superintendent McDonald and the superintendent of the casing department came into the beef-offal department, stood for a time in front of the bench where Merle and Sebert were working, and then went into the foreman's office. About 20 minutes later Richard Deering, foreman of the beef-offal department, came over to Merle and Sebert and said: "I hear you've got C. I. O. buttons in your caps, and someone has told McDonald that you're cornering all the new men that come up here and talking C. I. O. to them. You fellows better take it easy because if I get orders I'll have to lay you off." In October or November 1937, E. M. Bedore, general foreman in charge of several departments, visited the beef-offal department. Afterward, according to Merle, Foreman Deering came over and said: "He told me this morning to put some heat on you fellows." Thereafter, Bedore and others watched his work much more frequently. Deering denied making any of these statements. However, in view of the fact that a memorandum was made of the first incident on the day it occurred we are inclined to doubt the accuracy of Deering's denial a year later when the incident was called to his attention. Also, the fact that Superintendent McDonald told Deering 15 or 20 times not to have any arguments about unions, but to "just keep still," indicates that Deering talked about unions to employees in his department to the knowledge of the respondent. Therefore, despite Deering's denial, we find that the incidents related by Merle and Sebert in their memorandum and by Merle on the witness stand occurred as set forth above.

The activities of George Karnstadt, a general foreman, were testified to at some length. George Hornerbrink, an employee in the beef-cutting department, testified that on one occasion in 1937 he was displaying a C. I. O. button on his work cap. Karnstadt came up while he was working and told him to take off his cap and get a new one, and that when he got a new one to put a brown button on it. Hornerbrink explained that the C. I. O. buttons were white and the Association's buttons brown at that time. On another occasion, probably in September 1937, the witness stated that Karnstadt referred to his C. I. O. button and said: "Better take it off . . . You are a pretty good sticker, a pretty good sticker for the C. I. O." In the spring of 1938 Karnstadt again remarked to Hornerbrink, who was wearing his C. I. O. button, "I see you are still sticking to them." Sam Reyer also testified that when he went into Karnstadt's office in

July 1937 wearing a C. I. O. button Karnstadt said: ". . . take off that button and put on a brown one." The witness stated the button of the Association was brown at the time. Karnstadt explained at the hearing that he told Hornerbrink to put on a new cap because his old one was dirty, and denied the other statements attributed to him. However, the testimony of Hornerbrink and Reyer bears striking similarity and Hornerbrink remembers three distinct occasions on which more or less veiled references and objections were made to the fact that he was wearing his C. I. O. button. In view of these factors we do not believe Karnstadt's denial is entitled to great weight, and we therefore find the above testimony of Hornerbrink and Reyer to be true.

One other instance will serve to indicate the character of the opposition to the C. I. O. expressed by the supervisory employees of the respondent. William Portz, an employee in the pork-cutting department, testified that he first displayed his C. I. O. button on April 27, 1938. Portz says that Al LaHue, his foreman, said to him on that occasion: "Since when are you fighting me, Bill?" Portz replied: "I don't think I am fighting you." To which LaHue said: "You are by putting that button on." Portz says LaHue earlier had warned him that he could get himself in trouble by signing a C. I. O. pledge card. LaHue denies that he made the statements Portz attributes to him. However, he admits giving Portz some advice about unions approximately 5 years ago, but says he had not talked about unions to anyone since the Wagner Act was held constitutional and the Assembly Plan dissolved. While the testimony of Portz and LaHue is in direct conflict, the fact that LaHue admitted having previously advised Portz concerning unions coupled with the fact that the Trial Examiner, who had opportunity to hear and observe the witnesses, found that LaHue made the statements attribued to him by Portz lead us to the same conclusion. We find that LaHue made the statements as set forth.

The evidence shows that solicitation of memberships in the Association continued on the property of the respondent during working hours in the spring of 1938. News sheets published by the Association were distributed on the floors of the various departments during working hours. Memberships were solicited and dues collected for the Association in the dressing rooms of the plant up to the time of its dissolution.

The respondent contended that it should not be found to have committed unfair labor practices within the meaning of Section 8 (1) and (2) because it had instructed its foremen and other supervisory employees neither to encourage nor discourage the employees in the matter of joining any labor organization, and that there was to be no soliciting of memberships by union representatives at the plant dur-

ing working hours. However, no effective means were adopted by the respondent to check the activities in the plant on behalf of the Association. There is no evidence that any official of the respondent made any effort to halt the solicitation which went on in the plant during working hours. In fact, the weight of the evidence points to its encouragement by the management. No effort was made by the respondent to disavow any of the acts of its supervisory employees expressing favor of the Association and disfavor of the United. Even though the respondent did instruct its foremen and supervisors not to interfere in any way with the employees' choice of labor organizations, the employees were not notified of this attitude, at least not prior to July 1938. Even then there was no express disavowal by the respondent of responsibility for such conduct on the part of supervisory employees. Under these circumstances, the acts of foremen and other supervisory employees are the acts of the respondent.[10]

Upon all the evidence we are satisfied that the respondent embarked on a course of action designed to produce an unaffiliated organization of its employees as amenable to its will as the old Assembly Plan which it had been compelled to abandon. The tenor of the notice read to the Assembly and posted on the bulletin boards, dissolving the Assembly Plan, is well calculated to inspire an "inside" organization.[11] The remarks of Cushman and McDonald revealed the preference of the respondent. Then the management representatives withdrew, leaving the hourly paid representatives with the impression that they were entitled to and were expected to take at once some action with respect to a successor organization. That the invitation to form an inside union was clear and that the suggestions made by representatives of the respondent at the dissolution meeting were forcefully presented is evidenced by the quick response. The management representatives withdrew from the Assembly at 11 o'clock or soon thereafter. By early afternoon the employee representatives had conferred with Attorney Green, selected upon the advice of Superintendent McDonald,[12] and were making ready to secure signatures for support of an unaffiliated organization. Thus, the

[10] See *Matter of Swift & Company, a corporation* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641, and United Packing House Workers Local Industrial Union No. 300*, 7 N. L. R. B. 269, 284.

[11] See *Matter of Swift & Company, a corporation* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641, and United Packing House Workers Local Industrial Union No. 300*, 7 N. L. R. B. 269; *Matter of Swift & Company* and *United Automobile Workers of America, Local No. 265*, 7 N. L. R. B. 287; *Matter of Swift and Company, a corporation* and *Local No. 530, United Packing House Workers Industrial Union, affiliated with the Committee for Industrial Organization*, 11 N. L. R. B. 809. In all of these cases the same statement was read to employee representatives.

[12] See *Matter of Swift and Company, Iowa Packing Company, and Newton Packing Company, corporations* and *Local 630, Amalgamated Meat Cutters and Butcher Workmen of North America and Detroit and Wayne County Federation of Labor*, 10 N. L. R. B. 991, 1003.

campaign was launched at once before the whole body of employees had opportunity to deliberate and to choose their own course of action. Between Thursday, April 22, and Monday, April 26, more than 51 per cent of the 2,500 employees were recruited to the Association. There was widespread solicitation of the memberships to the Association in the plant during working hours in the presence of supervisory employees of the respondent. Employees were relieved from their work by a strawboss to give Association representatives opportunity to interview them. Certain foremen and other supervisors talked to the employees in favor of the Association and expressed their opposition to the United. At least one foreman's office was used for solicitation of members and for a speech in behalf of the Association.

In our opinion the facts just recited show that the respondent assisted in the formation and administration of the Association. This view is corroborated by several additional incidents. One of the most significant is the haste of the respondent to recognize the Association as the representative of the employees. On April 27, 1937, just 6 days after the dissolution of the Assembly Plan, the letter from the respondent agreeing to negotiate was read to the first mass meeting of employees—even before the Association had actually been organized. The letter stated that more than 51 per cent of the eligible employees had signified their intention of joining the proposed Association and closed by declaring: "We agree that we will be very glad to negotiate with your properly appointed committees in accordance with the terms of the National Labor Relations Act." A statement of this character read to the first gathering of employees after abandonment of the Assembly Plan undoubtedly lent strong support to the formation of the Association and correspondingly discouraged any movement of employees to signify affiliation with an outside organization. Another incident of peculiar significance is the statement of John Larkin, president of the Association, that support for the Association came from "Swift and Company and none other." [13] It may be noted, also, that the same pattern of procedure was followed by the respondent at its plants in Denver, Colorado, Evansville, Indiana, and National City, Illinois, where employee representation plans were dissolved with like results.[14] It seems to us more than a coincidence that from several of such meetings came the organization of "inside" unions which received the quick recognition of the respondent.

[13] See *Cudahy Packing Co.* v. *National Labor Relations Board*, 102 F. (2d) 745 (C. C. A. 8th, 1939), modifying and affirming *Matter of The Cudahy Packing Co.* and *Packinghouse Workers Local Industrial Union No. 62, affiliated with the Committee for Industrial Organization*, 5 N. L. R. B. 472, where the evidence showed that an officer of the union alleged to be company dominated made similar admissions.

[14] See cases cited *supra*, footnote 11.

We find that the respondent has dominated and interfered with the formation and administration of the Association, and has contributed support to it; that by its aforesaid acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act.

C. *The discharge of Wallace Donovan*

The complaint, as amended, alleges that the respondent had engaged in unfair labor practices within the meaning of Section 8 (3) by discharging Wallace Donovan on or about November 27, 1937, and by refusing at all times since that date to reinstate him to his former position without loss of seniority and other rights, because of his membership in and assistance to the United. The Trial Examiner in his Intermediate Report found that the evidence did not sustain the allegation and that Donovan was not discharged for union activities, but was laid off for other reasons. The United has filed no exception to this finding and did not appear at the oral argument. We have examined the evidence and we agree with the Trial Examiner in his finding as to Donovan.

We find that the evidence does not sustain the allegation that the respondent discharged and refused to reinstate Wallace Donovan because of his membership in or assistance to any labor organization.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III A and B above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

The respondent contends that the issue concerning its domination and support of the Association is moot for the reason that the Association was voluntarily dissolved by its members on July 29, 1938, and upon notification of such dissolution the respondent on August 3, 1938, posted notices stating that it had withdrawn recognition from the Association and that it was entirely disestablished as the bargaining agent of the employees. The dissolution and disestablishment occurred after the charges were filed and the complaint issued in this proceeding, but before the hearing took place.

The voluntary dissolution of the Association has no effect upon the respondent's commission of unfair labor practices by its domina-

tion, interference, and support of the Association. The fact that the Association is no longer in existence is relevant only to the question of whether the respondent should be ordered to disestablish the organization. To effectuate the policies of the Act we shall, therefore, order the respondent to cease and desist from such unfair labor practices, and to refuse to give the Association any recognition as a collective bargaining agency, if it should ever return to active existence.[15]

We shall dismiss that portion of the amended complaint alleging discrimination in the hire and tenure of employment of Wallace Donovan, inasmuch as we have found the evidence does not support the charge.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. United Packing House Workers Local Industrial Union #814, is a labor organization within the meaning of Section 2 (5) of the Act.

2. Employees Security Association and its successor, Packing House Employees' Union of South St. Paul, Local No. 1, are labor organizations within the meaning of Section 2 (5) of the Act.

3. The respondent, by dominating and interfering with the formation and administration of Employees Security Association and its successor, Packing House Employees' Union of South St. Paul, Local No. 1, and by contributing support to said organizations, has engaged in unfair labor practices within the meaning of Section 8 (2) of the Act.

4. The respondent, by interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

6. By its lay-off of Wallace Donovan in November 1937 and failure to rehire him prior to July 15, 1938, the respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

---

[15] That the case is not moot and that the Board is entitled to enter its order under the circumstances see *Consolidated Edison Company of New York, Inc., and its affiliated Companies* v. *National Labor Relations Board*, 305 U. S. 197 (1938); *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U. S. 257, 261 (1937); *Guarantee Veterinary Co.* v. *Federal Trade Commission*, 285 Fed. 853, 859; *Matter of Swift and Company, a corporation* and *Local No. 530, United Packing House Workers Industrial Union, affiliated with the Committee for Industrial Organization*, 11 N. L. R. B. 809.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Swift and Company, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of Employees Security Association or its successor, Packing House Employees' Union of South St. Paul, Local No. 1, or with the formation or administration of any other labor organization of its employees, and from contributing support to Employees Security Association or its successor, Packing House Employees' Union of South St. Paul, Local No. 1, or to any other labor organization of its employees;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection, as guaranteed by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Refrain from recognizing Employees Security Association or its successor, Packing House Employees' Union of South St. Paul, Local No. 1, if it should ever return to active existence, as a representative of any of its employees for the purposes of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(b) Post immediately, and keep posted for a period of at least sixty (60) consecutive days from the date of posting, notices stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b), and that it will take the affirmative action set forth in 2 (a) of this Order;

(c) Notify the Regional Director for the Eighteenth Region, in writing, within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the amended complaint, in so far as it alleges the respondent has engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act, by discharging Wallace Donovan and refusing to reinstate him to his former position without loss of seniority and other rights, be, and the same hereby is, dismissed.